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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 SHANNON O'BRIEN, a single woman,  
11 Plaintiff,

12 v.  
13 CITY OF TACOMA, a municipal corporation;  
14 MICHAEL TORRES, Tacoma Police  
15 Department officer; DAVID FISCHER,  
Tacoma Police Department officer,

16 Defendants.

Case No. C04-5458FDB

ORDER GRANTING DEFENDANTS'  
MOTION FOR ATTORNEY'S FEES  
IN PART

17 This cause of action arose when Plaintiff alleged Section 1983 violations in connection with  
18 her arrest after a Walgreen's pharmacist advised police of an attempt to fill a potentially forged  
19 prescription. Judgment was granted in favor of Defendants as follows: First, judicial estoppel  
20 applies, because Plaintiff O'Brien asserted in her state court case that Walgreen's was solely  
21 responsible for her arrest and she signed a Confirmation of Joinder confirming that no additional  
22 parties were to be named nor additional claims to be asserted, and she ultimately settled her claim  
23 with Walgreen's for a substantial sum. Second, the officers had probable cause to arrest O'Brien  
24 because the pharmacist and the pharmacist technician both stated that Dr. Spence had not issued the  
25 prescription, and it was reasonable under all the circumstances for the officers to believe these

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1 individuals and arrest O'Brien for attempting to obtain a controlled substance by means of a forged  
 2 prescription. Officers Torres and Fischer, therefore, are entitled to judgment based on qualified  
 3 immunity. There is no evidence on which to base a *prima facie* case of municipal liability against the  
 4 City of Tacoma under Section 1983. Finally, Plaintiff O'Brien's negligence claims against all the  
 5 parties fail because they are barred by the public duty doctrine and Plaintiff has failed to establish that  
 6 any of the exceptions to the doctrine apply. Accordingly, Defendants are entitled to judgment on all  
 7 claims.

8 Defendants seek attorney's fees pursuant to 42 U.S.C. § 1988, which provides that the  
 9 Court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the  
 10 costs. The standard is set forth in *Christianburg Garment Co. v. Equal Employment Opportunity*  
 11 *Commission*, 434 U.S. 412 (1978), where the Court stated an attorney's fee aware is appropriate  
 12 where the plaintiff's claim was "frivolous, unreasonable, or without foundation, or the plaintiff  
 13 continued to litigate after it clearly became so." *Id.* at 422. The Court explained that

14 . . . the term "meritless" is to be understood as meaning groundless or without  
 15 foundation, rather than simply that the plaintiff has ultimately lost his case, and that  
 16 the term "vexatious" in no way implies that the plaintiff's subjective bad faith is  
 17 necessary prerequisite to a fee award against him.

18 *Id.* at 421. "[A] district court should not refuse to award attorney's fees to a prevailing defendant ...  
 19 solely on the ground of the plaintiff's financial situation." *Patton v. County of Kings*, 857 F.2d 1379,  
 20 1382 (9<sup>th</sup> Cir. 1988).

21 There was little to support Plaintiff's claims in this case. Plaintiff's claims were meritless  
 22 within the meaning of *Christianburg*. In view of Plaintiff's recovery and release in her case against  
 23 Walgreen's, and in persisting with this case with a dearth of factual and legal support, the case may  
 24 be called vexatious as well. In response, Plaintiff reargues her position and submits a declaration that  
 25 she does not work and cannot hope to ever hold gainful employment.

26 This case presents a situation where an award of attorney's fees is appropriate, although the

1 Court declines to award the full amount sought under the circumstances. Defendants seek  
2 \$14,829.75 in attorney's fees, and have submitted declarations in support of the hourly rate, which is  
3 average for this area, and well below the average rate in Seattle. Defendants' counsel also avers that  
4 she billed only for time spent on substantive matters, such as discovery and motions, and did not  
5 record time spent on general correspondence, short telephone conferences, and similar activities.  
6 Thus, 76.05 hours were submitted from July 19, 2004 and September 9, 2005. The Court will  
7 exercise its discretion and award Defendant \$7,000.00 in attorney's fees.

8 NOW, THEREFORE, IT IS ORDERED: Defendants' Motion for Attorney's Fees Pursuant  
9 to 42 U.S.C. § 1988 [Dkt. # 41] is GRANTED in part and Defendants are awarded \$7,000.00 in  
10 attorney's fees.

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12 DATED this 14<sup>th</sup> day of October, 2005.

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14 FRANKLIN D. BURGESS  
15 UNITED STATES DISTRICT JUDGE  
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